

In the Matter of:
Shoal Creek Valley Development Company, L.L.C.
The Preserve - Shoal Creek Valley
Docket No. CWA-07-2003-0288

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity”, in part, as construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale.

9. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The MDNR issued a NPDES General Permit for the discharge of storm water associated with construction activities, Permit No. MO-R109xxx. The permit became effective on March 8, 2002, and expires on March 7, 2007. The permit governs storm water discharges associated with construction or land disturbance activity (e.g., clearing, grubbing, excavating, grading, and other activity that results in the destruction of the root zone). The permit also applies to land disturbance activities near valuable resource waters.

Factual Background

11. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as The Preserve - Shoal Creek Valley located at NE 85th Street and Shoal Creek Parkway in Kansas City, Missouri (the “Site”). Construction activities occurred at the Site including clearing, grading and excavation which disturbed five (5) or more acres of total land

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area or which disturbed less than five (5) acres of total land area that was part of a larger common plan of development or sale.

13. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and goes into a tributary of Little Shoal Creek. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

14. Storm water contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. Respondent's storm water runoff is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. The Site was a "point source" which caused the "discharge of pollutants" as defined by CWA Section 502, 33 U.S.C. § 1362.

17. Respondent discharged pollutants into a tributary of Little Shoal Creek. Little Shoal Creek is a "navigable water" as defined by CWA Section 502, 33 U.S.C. § 1362.

18. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(x), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 12 above. MDNR assigned Respondent Permit No. MO-R109672 (the "Permit") which was issued on May 3, 2002.

20. On August 15, 2002, contractors for EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the treatment and disposal of storm water at the site in accordance with the CWA.

Findings of Violation

Failure to Have a Permit - Count 1

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

22. Missouri State Operating Permit number MO-R109xxx specifies that a Missouri State Operating Permit that specifically identifies the project must be issued before any site vegetation is removed or the site is disturbed.

23. The inspection referenced in paragraph 20 above, revealed that construction activities began on October 10, 2001. Respondent was issued Missouri State Operating Permit No. MO-R109672 on May 3, 2002. From October 10, 2001 until May 3, 2002, Respondent was not authorized to discharge storm water from land disturbance sites pursuant to the Permit.

24. Respondent's failure to obtain a permit before removing any site vegetation or disturbing the site is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p), and implementing regulations.

Failure to Maintain Pollution Control Measures - Count 2

25. The facts stated in paragraphs 11 through 20 above are herein incorporated.

26. Part 11 of the Requirements and Guidelines section of Respondent's permit requires Respondent to maintain all pollution control measures and systems in good order to achieve compliance with the terms of the General Permit.

27. The inspection referenced in paragraph 20 above, revealed that Respondent's pollution control measures, which included silt fences and straw bale controls, were not properly maintained.

28. Respondent's failure to properly maintain its pollution control measures is a violation of Part 11 of the Requirements and Guidelines section of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Failure to Install Appropriate Best Management Practices - Count 3

29. The facts stated in paragraphs 11 through 20 above are herein incorporated.

30. Part 8.e. of the Requirements and Guidelines section of Respondent's permit states that storm water runoff from disturbed areas which leave the site boundary shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment trap, silt fence, etc., prior to leaving the construction site.

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31. The inspection referenced in paragraph 20 above, revealed that Respondent did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the construction site along the perimeter of graded areas, at storm drain inlets, a storm drain outfall, and at an inactive, disturbed area along an unnamed tributary.

32. Respondent's failure to install appropriate impediments to sediment movement is a violation of Part 8.e. of the Requirements and Guidelines section of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Failure to Perform and Document Site Inspections -Count 4

33. The facts stated in paragraphs 11 through 20 above are herein incorporated.

34. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that regular inspections be performed at a minimum of once per week on disturbed areas which have not been finally stabilized. In addition, it requires that any deficiencies be noted in a report and corrected within seven calendar days of the inspection. The report is to be kept at a site which is readily available from the permitted site until final stabilization is achieved.

35. The inspection referenced in paragraph 20 above, revealed that Respondent did not perform site inspections at a minimum of once per week, note any deficiencies in a report, correct the deficiencies within seven calendar days of the inspection, and keep the report at a site which is readily available from the permitted site.

36. Respondent's failure to perform and document site inspections is a violation of Part 10 of the Requirements and Guidelines section of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Order For Compliance

37. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in paragraphs 38 through 40.

38. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of the permit.

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39. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

40. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

41. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Cynthia Sans
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

42. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

43. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover

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penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

44. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

Access and Requests for Information

45. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

46. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

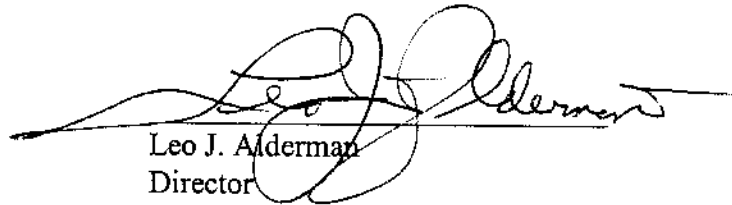
47. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

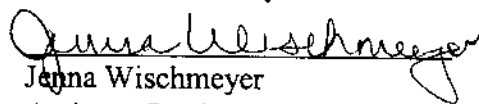
48. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

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Issued this 14th day of September, 2003.



Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101



Jenna Wischmeyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101

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CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Registered Agent, Ltd.
Registered Agent for Shoal Creek Valley Development Company, L.L.C.
2345 Grand Blvd., Suite 2800
Kansas City, Missouri 64108

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

9/17/03
Date

